

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2020

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THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.No.17294 of 2020

and W.M.P.Nos.21391 & 21392 of 2020

M/s.United Insitute of Technology .. Petitioner
Rep.by its Chairman Mr.S.Shanmugam
G.Koundampalayam, Perianaickenpalayam
Coimbatore - 641 020.

Vs

Deputy Director .. Respondent
Employees State Insurance Corporation
Sub-Regional Office
No.1897, Trichy Road, Ramanathapuram
Coimbatore - 641 045.

Writ Petition under Article 226 of the Constitution of India praying for the issue of a Writ of Certiorarified Mandamus calling for the records of the impugned order passed by the respondent bearing Ref.No.56 00 113542 000 1399/INS.IV/ SRO dated 28.11.2019 to quash the same and direct the respondent to pass a reasoned order according to the records and documents available with the petitioner.

For Petitioner : Mr.P.Thangaraj
For Respondents : Ms.G.Bharathwaj, Standing Counsel

ORDER

The prayer sought for herein is to call for the records of the impugned order passed by the respondent bearing Ref.No.56 00 113542 000 1399/INS.IV/ SRO dated 28.11.2019 to quash the same and direct the respondent to pass a reasoned order according to the records and documents available with the petitioner.

2. The petitioner is an educational institution, which has already been brought under the net of the provisions of the ESI Act. Accordingly under Section 45 of the said Act, determination order had been passed on 28.11.2019. In the meanwhile, the very notification issued by the State Government in G.O.Ms.No.237, Labour and Employment Department dated 26.11.2020 extending the provisions of the ESI Act to self financing educational institutions had been under challenge in a batch of writ petitions, where the petitioner

also filed similar writ petition in W.P.No.2491 of 2020.

3. All those writ petitions were heard and decided by the Full Bench of this Court in **"All India Private Educational Institutions Association -Vs- State of Tamil Nadu"** reported in 2020) 5 CTC 93 (FB) and (2020 3 LLJ 672.

4. In the said Full Bench judgment, this Court has held that the said G.O.No.237 was valid and therefore the provisions of the ESI Act extended to the educational institutions especially private unaided educational institutions are justified and accordingly the said G.O., was upheld.

5. At this juncture, now the petitioner has come up with this writ petition, challenging the determination order dated 28.11.2019 passed by the ESI Corporation under Section 45A of the ESI Act.

6. Heard Mr.Thangaraj, learned counsel for the petitioner and Mr.Bharathwaj, learned Standing Counsel appearing for the respondent ESI Corporation.

7. It has been pointed out by Mr.Bharathwaj, learned Standing Counsel for the ESI Corporation that, since it is an order of determination under Section 45A of the Act, as against which under Section 75 of the Act, appeal can be filed before the ESI Court, let the petitioner make an effort to file an appeal against the impugned order. Instead, he cannot straight away come to this Court challenging the same by way of the present writ petition.

8. Learned counsel for the petitioner however would submit that, there has been a condition to make a pre-deposit before filing an appeal and moreover the educational institution, due to COVID-19 situation had been suffering with financial crisis and also for yester years, no provision had been made by the institution to make the contribution under ESI Act and therefore the said arrears cannot be claimed now and since that has been indicated in the Full Bench judgment referred to above, the said point could not be raised now, as the impugned order was passed much prior to the Full Bench judgment, based on which only the present challenge is made, he contended.

9. I have considered the submissions made by the learned Standing Counsel for the respondent ESI Corporation. As has been rightly pointed out by the learned Standing Counsel, against the determination order under Section 45A of the Act, the petitioner has got an appeal remedy under the provisions of the ESI Act and therefore, he can invoke such appeal remedy and file an appeal before the ESI Court against the impugned order.

10. However, at the same time, in view of the mandate given by the Full Bench judgment referred to above with regard to the COVID-19 situation faced by everyone including the educational institutions, the invocation of Section 91C of the Act for waiver of the arrears and also the limitation under which the ESI Corporation can claim such arrears only for five years, this point can very well be canvassed by the petitioner before ESI Court, if he chooses to file an appeal against the impugned order.

11. However, those aspects cannot be canvassed before this Court by invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. Therefore, this Court is inclined to dispose of this writ petition with the following order.

(a) The petitioner is given liberty to approach the ***Appellate Authority** by filing a regular appeal against the impugned order dated 28.11.2019 passed under Section 45A of the ESI Act. For the said purpose, four weeks time is granted.

(b) Before ***Appellate Authority** by filing an appeal, it is open to the petitioner to invoke the provisions of Section 91C of the Act as well as limitation to claim only the five years arrears, the pandemic situation due to COVID-19 as well as the Fee Determination Committee's decision to fix the fee which was directed to be collected from the students by way of fixed fees, can also very well be canvassed by the petitioner for seeking indulgence against the ESI Corporation to invoke Section 91C apart from the regular reasons given under Rule 53 of the ESI Rules.

12. In view of the above, since the petitioner has got effective alternative remedy by way of appeal against the impugned order, this Court is not inclined to entertain this writ petition. Hence, it is dismissed at the admission stage

itself with the aforesaid directions and observations. No costs. Consequently, connected miscellaneous petitions are also dismissed.

-sd/-

Assistant Registrar (cs)

***As per order dated 10/02/2021
made in WP.No.17294/2020, correction
has been carried out,
-s/d-**

**Assistant Registrar(CSVII)
dt 22/02/2021**

//True Copy//

Sub Assistant Registrar

KST
To

Deputy Director
Employees State Insurance Corporation
Sub-Regional Office
No.1897, Trichy Road, Ramanathapuram
Coimbatore - 641 045.

**To be substituted order
already despatched on
19/01/2021**

+1 C.C.to MR.G.BHARADWAJ ,ADVOCATE SR.NO.39231

+1 cc to Mr.P.Thangaraj advocate sr7229

W.P.No.17294 of 2020

SSV (CO)
UMY (19/12/2020)
aa22/02/2021

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